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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,524	12/29/2003	Richard E. Parizek	I 1995.184 US D1	8568

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AKZO NOBEL PHARMA PATENT DEPARTMENT
PO BOX 318
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EXAMINER	
HINES, JANA A	
ART UNIT	**PAPER NUMBER**
1645	

DATE MAILED: 01/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/748,524	PARIZEK ET AL.	
	Examiner	Art Unit	
	Ja-Na Hines	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 December 2003*.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9, 11,15,17-19,22-26,28-30, 31,33,40-44,46 snd 47* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-9,11,15,17-19,22-26,28-30, 31,33,40-44,46 snd 47* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1, 3-9, 11,15,18,22-26 and 46 are drawn to a multicomponent vaccine for ruminants comprising a protective antigen from at least six clostridial organisms, at least one non-clostridial organism antigen and an adjuvant, classified in class 424, subclass 203.1.

II. Claims 2, 17,19, 28-31, 33,40 and 47 are drawn to a multicomponent vaccine for ruminants comprising a protective antigen from at least seven clostridial organisms, at least one non-clostridial organism antigen and an adjuvant, classified in class 424, subclass 93.1.

III. Claim 41 is drawn to a multicomponent vaccine for ruminants comprising a protective antigen from at least two clostridial organisms, a protective antigen component from a virus and an adjuvant, classified in class 424, subclass 201.1.

IV. Claim 42 is drawn to a multicomponent vaccine for ruminants comprising a protective antigen from six clostridial organisms, a protective antigen component from four viruses and an adjuvant, classified in class 424, subclass 167.1.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and any of II-IV are independent and distinct products which differ materially in structure and composition. The products are also recognized as diverse because of their different classification. The products are independent and distinct from one another due to their diverse make-up, their expected different properties, modes of action, different effects and reactive conditions. For instance, the vaccine product of Group I cannot protect against a viral infection like group III can. Only Group II can protect against at least seven clostridial organisms; no other group has that feature. Similarly, only group IV comprises a protective antigen from six clostridial organisms, a protective antigen component from four viruses and an adjuvant thereby making it an independent and distinct product when compared to the other groups. Each group has a different structure, produces different effects and has a different function from the other groups. Therefore, the products of the inventions are distinct as claimed.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, as exemplified by the different classes and subclasses. Furthermore, a search for the invention of the four groups would not be coextensive because a search indicating one vaccine is novel or unobvious would not extend to a holding that the other vaccines are novel or unobvious. There is a search burden also in the non-patent literature. For instance, searching for group IV requires an extensive search of the art of both bacterial and viral vaccines, thereby requiring an in-depth analysis of the appropriate technical literature; however groups I and II would not require that same search. As such, it would be burdensome to search all the groups together.

3. Because these inventions are distinct for the reasons given above, have acquired a separate status in the art as shown by their different classification and have divergent subject matter, the search required for Group I is not required for Group II-IV, restriction for examination purposes as indicated is proper.

4. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ja-Na Hines whose telephone number is 571-272-0859. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ja-Na Hines
January 13, 2005

LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
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